

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of

MM DOCKET No. 96-184

CONCORD AREA

BROADCASTING, INC.

Order to Show Cause Why

the License for Station

KRHT(AM), Concord, CA

Should Not Be Revoked

To: Administrative Law Judge John M. Frysiak

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MOTION FOR SUMMARY DECISION

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Dated: September 18, 1996

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SUMMARY

Station KRHT has been silent since January 31, 1993, pursuant to Commission authorization.

In for KRHT to return to the air, it must secure a new transmitter site large enough to accommodate a five tower directional array. Because of technical considerations, KRHT's transmitter site can only be located in a small area which is primarily residential. This has made it difficult for KRHT to secure a suitable transmitter

In December, 1993, the Commission published a preliminary ranking of stations that had applied to migrate to the expanded band. KRHT ranked 9th, making it a virtual certainty that it would receive a frequency in the expand if it retained this ranking when a final ranking of applicants for the expanded band was adopted. Since KRHT would be able to operate on a nondirectional basis in the expanded band, it would require much less land for its transmitter site, and it would have more flexibility in choosing a location for that site. Accordingly, upon learning of KRHT's high ranking for the expanded band, the station's licensee, Concord Area Broadcasting, Inc. ("Concord") made a decision to suspend its search for a new transmitter site for KRHT until a final determination was made as to whether KRHT would be awarded an expanded band frequency. Concord informed the Commission of this decision, first in an application for

reinstatement of KRHT's construction permit for its five tower array which was granted, again in a report required as a condition of KRHT's construction permit, again at a face to face meeting between one of its principals and the Chief of the AM Branch, and yet once more in a further application for reinstatement of KRHT's construction permit which also was granted. Additionally, after being first informed of the Concord's decision to defer searching for a new site for KRHT until a final decision was made as to whether KRHT would be awarded an expanded band frequency, the Commission granted 7 extensions of KRHT's authority to remain silent.

When Concord learned that the Telecommunications Act of 1996 included a provision that all stations that had been silent for one year would automatically lose their licenses, it immediately renewed its efforts to secure a site at which KRHT could construct the five tower array necessary for it to return to the air on its licensed frequency. Despite the difficulties of securing a suitable site in the predominately residential area in which KRHT's facilities must be located, in early September, 1996, Concord succeeded in obtaining reasonable assurance as to the availability of two sites. Even before securing assurance of as to the availability of the sites, Concord had instructed its consulting engineering firm to study the sites for feasibility, and upon receiving reasonable assurance that it could use the

sites, it instructed its consulting engineering firm to expedite the study of the sites and to prepare and application to relocate KRHT to whichever of the sites meets the Commission's technical requirements. Concord expects to file such an application by mid-October.

It is clear from the record that Concord has at all times had the intention to return KRHT to the air and that, with the securing of reasonable assurance as to the availability of two sites which from which it is appears that KRHT can operate in compliance with the Commission's technical rules, Concord has the capability to return KRHT to the air as soon as an application for one of the sites can be completed and granted.

The record reflects that Concord has at all times had authority from the Commission for KRHT to remain silent and that Concord has always had the intention to return KRHT to the air. Accordingly, it is clear that Concord has not violated Sections 73.1740 or 73.1750 of the Commission's rules.

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CONCORD AREA
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Order to Show Cause Why
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KRHT(AM), Concord, CA
Should Not Be Revoked

To: Administrative Law Judge John M. Frysiak

MOTION FOR SUMMARY DECISION

Concord Area Broadcasting, Inc. ("Concord"), by its attorney, hereby moves pursuant to Section 1.251 of the Commission's Rules for summary decision in its favor of all of the issues that were specified in the *Order to Show Cause and Hearing Designation Order* (DA 96-184) released August 30, 1996. As will be shown herein, there is no dispute as to any material fact relevant to the resolution of the issues designated for hearing, and the undisputed facts fully support grant of this Motion.

I. Preliminary Statement

Station KRHT has been silent for more than one year. Accordingly, if KRHT does not resume broadcast operations by February 9, 1997, the license for the station will be canceled by operation of law regardless of ultimate resolution of the issues in this case. *Order, Silent Station Authorizations*, FCC 96-218, released May 17, 1996. ("Silent Stations Order"). In order for KRHT to resume operations by February 9, 1997, it must obtain a

construction permit, or special temporary authority, to construct new facilities at a new transmitter site.

Concord has obtained reasonable assurance from the owners of two different parcels of property large enough to accommodate KRHT's facilities that Concord can lease their property for use as KRHT's transmitter site and Concord's engineering consultants, Hatfield and Dawson, are currently studying both parcels of land to determine whether KRHT can operate from both, or either, site in compliance with the FCC's technical rules. See Declaration of Chester P. Coleman attached as Exhibit A hereto ("Coleman Declaration"). Hatfield and Dawson has advised Coleman that they expect to complete these studies around the 20th of September and, assuming that one of the sites satisfies the FCC's technical requirements, that they should be able to complete the technical portion of an application for the site by October 15. *Id.* However, it is the policy of the Mass Media Bureau not to process any applications for construction permits or requests for special temporary authority to construct and operate new facilities that are necessary in order to enable stations such as KRHT to resume operations prior to the February 9, 1997, "drop dead" date while proceedings to determine whether the station's license should be revoked are pending.¹

¹The undersigned was orally advised of this unwritten policy by an official of the Audio Services Division. As it is a policy of the agency, it may be officially noted.

Although the hearing designation order ostensibly preserves Concord's statutory right to a hearing on the question as to whether its license for KRHT should be revoked, and it even accords Concord the substantial benefit of imposing the burdens of proceeding and the burdens of proof on the Mass Media Bureau, unless this case is decided quickly by summary decision, Concord will be effectively deprived of its right to a hearing on the issues by the combined operation of the Silent Station Order and the Mass Media Bureau policy referenced in the preceding paragraph. Accordingly, in order to accord Concord the due process that it is supposedly guaranteed by both the Communications Act and the United States Constitution, it is respectfully submitted that this Motion should be considered and acted upon on an expedited basis.

II. The Facts²

Station KRHT³ has been off the air since January 31, 1993, when it suspended operations due to financial problems. See Concord's Request for Authority to Remain Silent attached as

²In so far as the facts recited herein are contained in applications for reinstatement of Concord's construction permit for KRHT's proposed 5 tower array, in reports filed with the FCC in connection with that construction permit, in requests for authority for KRHT to remain silent, and actions by the FCC granting the applications for reinstatement of the construction permit or the requests for authority for KRHT to remain silent, the facts are part of the FCC's official records and may be officially noted.

³ KRHT's call letters were KWUN in 1993, they were subsequently changed to KKIS, and they were later changed to the current call letters. To avoid confusion, the station will be referred to by its current call letters throughout this Motion.

Exhibit B hereto. Shortly after KRHT went off the air, it lost its transmitter site. See Exhibit C hereto. The Commission granted Concord's requests to remain silent which are contained in the letters attached as Exhibits B and C hereto by letter dated June 1, 1993. The authority for KRHT to remain silent expired on September 1, 1993. As reflected by the following summary of Concord's requests for extension of its authority for KRHT to remain silent and the Commission's actions granting those requests, at no time has KRHT been off the air without authority.

<u>Date of Request</u>	<u>Date of Grant</u>	<u>New Expiration Date</u>
8/93 ⁴	2/15/94	5/15/94
? ⁵	6/22/94	9/22/94
? ⁶	9/14/94	12/14/94
12/12/94	12/20/94	3/20/95
3/15/95	3/30/95	6/30/95
6/8/95	7/6/95	10/6/95
7/27/95	12/5/95	6/5/95
5/15/96	7/19/96	8/18/96
8/15/96 ⁷		

⁴The copy of the request in the Commission's files is very faint, making it impossible to read the day of the month that the request was written. The month, August, can be read. The request bears a readable stamp reflecting that it was received in the AM Branch on September 9, 1993.

⁵The letter requesting extension of the silence authority which expired on May 15, 1994, could not be found in the Commission's file; however, as the Commission extended the authority by letter dated June 22, 1994, it is obvious that a request for extension was filed.

⁶This request also was not found in the Commission's files. However, as it was granted on September 14, 1994, 8 days before the authority expired, it is obvious that a timely extension request was filed.

⁷Request not granted as license was designated for hearing.

Copies of the requests for extensions of KRHT's silence authority and of the Commission letters granting those requests which are summarized above are attached as Exhibit D hereto.

The Commission's July 19, 1996, letter only extended KRHT's authority to remain silent for a period of 30 days and it advised Concord that no extensions of the silence authority were contemplated

absent documentation regarding the delays experienced as a result of the Concord Pavilion construction. This documentation should include any supporting statements from city officials. Further you must detail any efforts made to relocate KRHT's facilities to a different location.

See Exhibit D. In requesting a further extension of KRHT's authority to remain silent by letter dated August 15, 1996, Concord's President, Joseph Buerry ("Buerry") supplied the documentation and information specified in the Commission's July 19, 1996, letter as a prerequisite for any further extensions of the silence authority. Specifically, Buerry stated in his August 15, 1996, request for extension of the silence authority that the City of Concord had made a determination not to lease the Concord Pavilion property for KRHT's facilities and that the city had given him two leads as to other property which he was pursuing. Attached to the August 15, 1996, request was a letter addressed to Buerry from the City of Concord dated August 14, 1996, advising him that the City had determined that the Concord Pavilion site that it had

considered leasing to KRHT was "not large enough to locate the proposed five-tower array without impairing other functions at the Pavilion" and that the "Concord Pavilion would be negatively impacted aesthetically with the placement of the tower array adjacent to the facility." *Id.*

In the August 15, 1996, request, Buerry pointed out that it was difficult for Concord to locate a site large enough to accommodate KRHT's five tower array in what is predominately a residential area and advised the Commission that the owner of another site that Concord had sought permission to use, Canyon Creek, had recently notified Concord that "it would not be in the best interests of the development to allow 5 towers to be erected." Buerry concluded his August 15, 1996, request by stating that the City of Concord had given him two leads as to other properties that KRHT might be able to lease and that he was pursuing these leads. On September 5, 1996, Corrie Development Corporation, one of the property owners that the City of Concord had suggested that Buerry contact, sent Buerry a letter advising him that it was interested "in leasing a portion of [its] property to relocate your 5 towers and transmitter." See Coleman Declaration.

On December 3, 1993, the Commission published a tentative list of the stations that had applied to migrate to the expanded AM band. KRHT ranked ninth on this list, virtually guaranteeing it an expanded band frequency if it were to retain this ranking when the

final ranking of applicants for the expanded band was released. Following release of the tentative ranking of applicants for the expanded band, Coleman spoke with an official in the FCC's AM Branch and explained that, in light of the difficulties that Concord was experiencing in locating a site at which KRHT's five tower array could be constructed, it was Concord's intention if it were ultimately awarded a frequency in the expanded band to turn in its construction permit for the new five tower array on its current frequency and only to construct an expanded band facility since a station in the expanded band would operate nondirectionally, requiring less far less land and giving Concord much more flexibility in selecting a transmitter site. See Coleman Declaration. The staff official advised Coleman that the AM Branch would not object to Concord deferring action on finding a site at which new facilities for KRHT could be constructed until after a final decision was made as to whether Concord would be awarded an expanded band frequency, and this advice was confirmed by the staff action granting Concord's application for reinstatement of its construction permit for KRHT's five tower array wherein Concord had clearly stated its intention to defer efforts to secure a new site for KRHT until a final determination was made as to whether it would be awarded an expanded band frequency. See Application (FCC Form 307) for reinstatement of KRHT's construction permit granted (File No. BP-940509DA) granted June 2, 1994, a copy of which is

attached as Exhibit E hereto.

On August 21 1995, Coleman filed a report concerning steps that Concord had taken to construct the facilities authorized in its construction permit for KRHT's new five tower array wherein he reiterated the problems that Concord was experiencing in locating a suitable site for KRHT due to "the relatively large tract of land needed" and "the high level of urbanization in the areas in which the facilities would need to be constructed." In this letter, Coleman also reiterated Concord's decision not to continue to search for a new site for KRHT until the Commission made a final determination as to whether KRHT would be awarded a channel in the expanded band, stating as follows:

In view of the fact that KKIS was near the top of the list of stations that would be awarded frequencies in the expanded band, and in view of the fact that it appears unlikely that [Concord] will be able to secure a tract of land suitable for constructing the facilities specified in its construction permit, [Concord] has concluded that, rather than continue to search for a site for the facilities specified in the construction permit, it will turn in the permit for cancellation upon being awarded a construction permit for a frequency in the expanded band. As the release of a final order in the expanded band proceeding has been expected for some time, [Concord] has not continued actively to search for a site at which the facilities specified in its construction permit can be built while awaiting the final order in the expanded band proceeding which it is confident, based upon KKIS' high ranking in the original order, will include an expanded band frequency for KKIS.

See Letter from Coleman to the Secretary, FCC dated August 21, 1995, attached as Exhibit F hereto.

On or about November 1, 1995, Coleman and Concord's FCC counsel met with the Chief of the AM Branch, James Burtle and William Ball, an engineer in the AM Branch, to discuss Concord's problems in securing a suitable site for the facilities specified in KRHT's construction permit and whether Concord should file an application to reinstate its construction permit for the facilities. Concord had allowed the permit to expire because the site specified in the construction permit was no longer available and, therefore, Concord would not be able to construct those facilities regardless of the outcome of its application to migrated in the expanded band. Messrs. Burtle and Ball advised Coleman that Concord should file an application to reinstate the expired construction permit, notwithstanding the fact that it had no intention of constructing the facilities, since the construction permit facilities would be used in computing the amount of interference caused by KRHT and, thus, KRHT's priority ranking for an expanded band frequency. See Coleman Declaration.

Immediately following the meeting with Messrs. Burtle and Ball, Concord filed an application (BP-951103DA) for reinstatement of KRHT's expired permit for its five tower array, a copy of which is attached as Exhibit G hereto. This application, which was granted on February 16, 1996, specifically reflected the fact that

Concord had no intention of building the facilities if it was awarded an expanded band frequency and that Concord did not intend to resume looking for a new site for KRHT until the question as to whether it would be awarded an expanded band frequency was resolved.

When the Telecommunications Act of 1996 was enacted with the provision that stations which had been silent for one year would lose their licenses, Concord realized that it would need to locate a site at which KRHT could be placed back on the air before the first anniversary of enactment of the Act. Therefore, Concord renewed its suspended efforts to secure a site at which KRHT's five tower array could be constructed. These efforts consisted of renewing negotiations with the City of Concord concerning the possibility of using the Concord Pavilion site and contacting the owners of several other potential sites. See Coleman Declaration. As noted above, as a result of these renewed efforts, Concord secured reasonable assurance that it could lease property of sufficient size to accommodate KRHT's five tower array from Corrie Development Corporation and from the Leshner Trust.

Even before Corrie Development and the Leshner Trust properties had responded to Concord's requests to lease their properties for KRHT, Coleman sent topographical maps of their properties to Hatfield and Dawson and instructed that firm to study the feasibility of the properties as transmitter sites for KRHT.

Immediately after being notified that Corrie Development and the Leshner Trust had agreed to lease their properties to KRHT, Coleman instructed Hatfield and Dawson to expedite their review of both sites and to prepare the technical portion of an application for construction permit for one of the sites as soon as a determination is made that one of the sites meets the FCC's technical requirements. Based upon advice from Hatfield and Dawson, Concord expects to know whether one or both sites will work by the end of the current month and, if either site is technically suitable, to file an application for that site by mid-October. If one of the sites does satisfy the technical requirements of the Rules, Concord will promptly file an application to relocate KRHT to that site with requests for expedited processing of the application and for special temporary authority to allow Concord immediately to install a single tower so that KRHT can begin operations at reduced power prior to February 9, 1997. It is anticipated that such an application will be filed before October 15. See Coleman Declaration. When it is, this Motion, if not yet granted, will be supplemented to reflect the filing.

As noted above, at all relevant times Station KRHT has been silent with Commission authorization. Moreover, as reflected in the requests for extensions of KRHT's silence authority, the applications for reinstatement of its construction permit, and the report to the Commission that Coleman filed in August, 1995, the

Commission has been kept fully apprised as to the difficulties that Concord faced in securing a new transmitter site and of Concord's decision not to pursue a new transmitter site until a final determination was made as to whether KRHT would be awarded an expanded band frequency. It is also clear from the documents submitted herewith that the Commission gave its tacit approval of Concord's decision to defer finding a new site for KRHT until a final determination was made as to whether KRHT would receive an expanded band frequency when by granting Concord's applications for reinstatement of KRHT's construction permit and Concord's requests for extension of KRHT's authority to remain silent after the Commission was explicitly apprised of Concord's decision in this regard.

III. Conclusions of Law

Issue 1: To Determine Whether Concord Area Broadcasting Has the Capability and Intent to Expeditiously [sic] Resume the Broadcast Operations of KRHT(AM) Consistent with the Commission's Rules.

The evidence is indisputable that it has always been Concord's intent to resume operations of KRHT. However, as Concord explained repeatedly in its applications for extensions of its authority for KRHT to remain silent and for extension and reinstatement of its construction permit for KRHT's five tower direction facilities, due relatively large amount of land needed to accommodate KRHT's five tower array, the small area in which the station's facilities can be located and the fact that this area is predominately

residential, it has been extremely difficult for Concord to find a site at which the station's facilities can be relocated. As a result of these difficulties, and in view of the fact that KRHT ranked near the top of the initial list of stations that had applied to migrate to the expanded band, Concord suspended its efforts to find a new site for KRHT pending a final determination as to whether KRHT would be awarded an expanded band frequency. Concord's suspension of efforts to find a site for KRHT was with both the knowledge and approval of the Commission as evidenced by the fact that the Commission granted Concord's applications BP-940509DA and BP-951103AD, both of which expressly reflected Concord's decision to suspend a search for a new site pending a final determination on whether KRHT would be awarded an expanded band frequency and the granted 7 requests for extension of KRHT's silence authority after being explicitly advised by Concord in BP-940509DA that it had suspended its efforts to secure a new site for KRHT pending a final resolution of its application to migrate to the expanded band.

After the Telecommunications Act of 1996 made it clear that Concord would need to secure a new site for KRHT's five tower array in order to avoid losing KRHT's license by operation of law on February 9, 1997, Concord renewed its efforts to secure a site at which KRHT could be constructed. These efforts bore fruit. On September 5, 1995, Corrie Development Corporation sent Concord a

letter advising giving it reasonable assurance that KRHT's five tower array could be constructed on property owned by that corporation and on, September 11, 1996, Concord was advised that the Trustee's of the Leshar Trust property had authorized the Trust to lease that property to KRHT.

Even before receiving assurances from either Corrie Development Corporation or the Leshar Trust that KRHT could use their properties, Coleman instructed Hatfield and Dawson to begin studies as to the feasibility of KRHT operating from both of the properties. Upon receiving reasonable assurance that the Corrie Development Corporation and the Leshar Trust properties could be used by KRHT, Coleman instructed Hatfield and Dawson to expedite its studies of the sites and to prepare an application for a construction permit for Concord to construct KRHT's facilities at whichever of the sites that it is found to be suitable.

It is clear from the evidence of record that Concord has the capability and the intent to construct new facilities for KRHT at either the Leshar Trust site or the Corrie Development Site, subject only to the Commission granting it a construction permit to operate KRHT from one of those sites.⁸ Accordingly, Issue 1 must

⁸As shown herein, KRHT has been off the air with the consent of the Commission at all relevant times. Moreover the record is clear that Concord has been diligent in its efforts to secure a new transmitter site for KRHT following the enactment of the Telecommunications Act of 1996 which changed the rules under which Concord and the Commission had been proceeding with respect to KRHT. In these circumstances, Concord submits that the Commission is obligated expeditiously to process an application

be resolved in favor of Concord.

**Issue 2: To Determine Whether Concord Area
Broadcasting has violated Sections
73.1740 and/or 73.1750 of the
Commission's Rules.**

Section 73.1740 requires stations which are unable to maintain the minimum operating schedule specified in that section to request and to file a request for authority not to comply with the minimum operating schedule within thirty days of first not being able to meet the schedule. The record reflects that (i) Concord filed a timely request KRHT to remain silent after the station first suspended operations on January 31, 1993, (ii) at all times since that date, Concord filed timely requests to renew KRHT's authority to remain silent, and (iii) at no time subsequent to the grant of Concord's initial timely filed request for authority for KRHT to remain silent has KRHT been silent without express Commission authorization. Accordingly, it must be found that Concord has not violated Section 73.1740.

Section 73.1750 deals with the discontinuance of operations. It is clear from the record that Concord has at no time discontinued operations within the meaning of Section 73.1750, but rather, Concord has merely suspended operations of KRHT, with

for KRHT to resume operations from a new site. Failure of the Commission to accept and expeditiously process such an application would have the effect of depriving Concord of its right under the Communications Act to a hearing on the question as to whether its license for KRHT should be revoked.

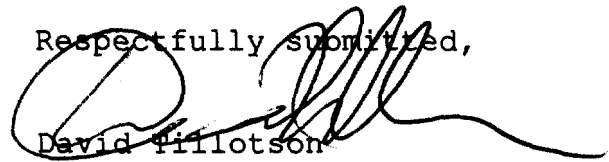
Commission knowledge and consent, first while it sought a new transmitter site and then, after it was ranked highly for an expanded band frequency, while it awaited the final outcome of the proceedings involving requests to migrate to the expanded band. Upon learning that it would not receive an expanded band frequency, and that, regardless of the outcome of the expanded band proceeding, KRHT would lose its license if it did not resume operations by February 9, 1997, Concord undertook renewed, diligent efforts to secure a transmitter site for KRHT, which efforts have borne fruit. As it is clear that Concord has at all times intended to return KRHT to the air, it must be concluded that Concord has not "discontinued" the operation of KRHT within the meaning of Section 73.1750.

Issue 3: To Determine in light of the evidence adduced pursuant to [Issue 1 and 2], whether Concord Area Broadcasting is qualified to be and remain the licensee of KRHT(AM).

It is clear from the evidence submitted with this Motion that Concord has the intent and capability to return KRHT to the air and that it is fully qualified to be and remain the licensee of the station.

WHEREFORE, for the foregoing reasons, Concord Area Broadcasters, Inc. submits that all of the issues in this proceeding should be resolved in its favor by summary decision.

Respectfully submitted,



David Tillotson
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September 18, 1996

CERTIFICATE OF SERVICE

I, David Tillotson, do hereby certify that a copy of the foregoing **Motion for Summary Decision** has been sent this 18th day of September, 1996, via first class United States mail, postage pre-paid, to:

The Hon. John M. Frysiak
Federal Communications Commission
Office of Administrative Law Judges
2000 L Street, Room 223
Washington, DC 20554

Kenneth Scheible, Esq.
Federal Communications Commission
Mass Media Bureau, Hearing Division
2025 M Street, NW, Room 7212
Washington, DC 20054



David Tillotson

EXHIBIT A

DECLARATION OF CHESTER P. COLEMAN

Chester P. Coleman states under penalty of perjury as follows:

1. I am Chairman and a 50% stockholder of Concord Area Broadcasters, Inc. ("Concord"), which is the licensee of Station KRHT, Concord, California.

2. Station KRHT has been silent since January, 1993, when it lost its transmitter site. Upon losing KRHT's transmitter site, Concord promptly requested authority to remain silent and this authority was initially granted for 90 days on June 3, 1993.

3. KRHT is licensed for operation with a directional antenna system, and at the time it lost its transmitter site, it had a construction permit for new facilities utilizing a five tower directional array. Because of interference considerations and the requirement that KRHT provide city grade service to the City of Concord, KRHT is limited to operating from a site in close proximity to its licensed site. The area in which KRHT must located its transmitter site predominately residential, making it difficult for Concord to locate a large enough tract of land on which to erect KRHT's five towers that would could be zoned for such use.

4. On December 3, 1993, the Commission released a public notice ranking stations that had applied to migrate to the expanded band on the basis of the amount of interference that the stations caused. KRHT ranked ninth on this listing, a ranking which virtually assured that KRHT would receive an expanded band channel if it retained this ranking, or something close to it, when the final rankings were published. Upon learning of KRHT's high ranking for the expanded band, I spoke with a member of the staff of the AM Branch and explained that, in view of the difficulty that Concord was experiencing in locating property on which it could construct KRHT's five tower directional facilities and the costs that would be involved in constructing such facilities if a suitable site could be found, Concord would prefer build a station in the expanded band rather than construct the five tower directional facility in the expanded band because a station in the expanded band would operate nondirectionally, thus requiring much less land and expanding the area in which the station's transmitter site could be located. The staff indicated that it saw no problem with Concord waiting for a final decision on expanded band allotments before taking further action towards constructing new facilities for KRHT on its licensed frequency.

5. On May 9, 1994, Concord filed an application for a construction permit to replace its construction permit for KRHT's five tower array. In that application, I referred to the conversation that I had had with the staff of the AM Branch a couple months earlier in which I had stated Concord's preference to wait for a frequency in the expanded band rather than proceed with construction of the facilities specified in the construction permit, and I further stated that, in the event KRHT received an expanded band frequency, Concord would turn in the construction permit. When the Commission granted the application for reinstatement of the permit, I construed that action as a confirmation that the Commission had no objection to the course of action that I had outlined, to wit, waiting to see whether KRHT received an expanded band frequency before taking any further action towards constructing new facilities.

6. On August 21, I sent the Commission a report concerning the steps that Concord had taken to proceed with construction of new facilities as required by a condition of Concord's construction permit for the facilities. In that report, I advised the Commission as follows:

In view of the fact that [KRHT] was near the top of the list of stations that would be awarded frequencies in the expanded band, and in view of the fact that it appears unlikely that [Concord] will be able to secure a tract of land suitable for constructing the facilities specified in its construction permit, [Concord] has concluded that, rather than continue to search for a site for the facilities specified in the construction permit, it will turn in the permit for cancellation upon being awarded a construction permit for a frequency in the expanded band. As the release of a final order in the expanded band proceeding has been expected for some time, [Concord] has not continued actively to search for a site at which the facilities specified in its construction permit can be built while awaiting the final order in the expanded band proceeding which it is confident, based upon KKIS' high ranking in the original order, will include an expanded band frequency for [KRHT].

On or about November 1, 1995, I and Concord's communications counsel met at the FCC's offices with two officials of the AM Branch, James Burtle and William Ball, to discuss the fact that Concord was waiting for a final determination as to which stations would be awarded frequencies in the expanded band before proceeding with efforts to find a site from which KRHT could